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**STATE OF MINNESOTA
IN COURT OF APPEALS
A12-2145**

Ezequiel Ramos, petitioner,
Appellant,

vs.

State of Minnesota,
Respondent,

**Filed May 28, 2013
Affirmed
Toussaint, Judge ***

McLeod County District Court
File No. 43-CR-07-1333

Lori Swanson, Attorney General, St. Paul, Minnesota; and

Michael K. Junge, McLeod County Attorney, James A. Schaeffer, Assistant County
Attorney, Glencoe, Minnesota (for respondent)

William E. Ford, Ford Law Office, Hopkins, Minnesota (for appellant)

Considered and decided by Peterson, Presiding Judge; Ross, Judge; and Toussaint,
Judge.

* Retired judge of the Minnesota Court of Appeals, serving by appointment pursuant to
Minn. Const. art. VI, § 10.

UNPUBLISHED OPINION

TOUSSAINT, Judge

Appellant Ezequiel Ramos challenges the district court's reconsideration and rescission of its order vacating his 2007 terroristic-threats conviction, contending that the district court should not have heard or granted the state's motion to reconsider the order. Because the U.S. Supreme Court's decision in *Padilla v. Kentucky*, 130 S. Ct. 1473 (2010), does not apply retroactively, and because Ramos did not bring his petition for postconviction relief within the time required by Minn. Stat. § 590.01, subd. 4 (2012), we affirm the district court's dismissal of Ramos's petition.

DECISION

We review a postconviction court's factual findings for clear error and its legal conclusions de novo. *Martin v. State*, 825 N.W.2d 734, 740 (Minn. 2013). "We will not disturb a postconviction court's ruling absent an abuse of discretion." *Opsahl v. State*, 677 N.W.2d 414, 422 (Minn. 2004).

I. Motion to Reconsider

Ramos first argues that the district court should not have reconsidered its order vacating his conviction. The district court originally vacated Ramos's 2007 terroristic-threats conviction and allowed him to withdraw his guilty plea because it found that he was not informed of the immigration consequences of his plea as required by *Padilla v. Kentucky*, 130 S. Ct. 1473. Shortly after the district court granted Ramos's postconviction petition on these grounds, however, the Minnesota Supreme Court ruled that the *Padilla* decision does not have retroactive effect. *Campos v. State*, 816 N.W.2d

480 (Minn. 2012).¹ In light of the *Campos* decision, the district court allowed the state to bring a motion to reconsider the decision and ultimately reversed the original order and reinstated Ramos's conviction.

Ramos is correct that the Rules of Criminal Procedure do not expressly allow motions to reconsider, but neither do the rules preclude such motions. Minnesota courts have generally allowed motions to reconsider in criminal cases. See *Sanchez-Diaz v. State*, 758 N.W.2d 843, 848-49 (Minn. 2008) (discussing the district court's denial of a defendant's motion for reconsideration of dismissal of his petition for postconviction relief); *State v. Montjoy*, 366 N.W.2d 103, 107-08 (Minn. 1985) (holding that the district court properly reconsidered its pretrial order); *State v. Papadakis*, 643 N.W.2d 349, 356-57 (Minn. App. 2002) ("Although the rules of criminal procedure do not specifically authorize motions for reconsideration of omnibus rulings, the district court has the inherent authority to consider such a motion. . . . At times, a motion for reconsideration may be the most efficient and preferable course of action, and it can spare parties the time, trouble, and expense of an appeal.") (citation omitted). The district court therefore did not err in allowing the state's motion to reconsider its original order.

II. Rule 15

Ramos does not argue on appeal that he is entitled to withdraw his guilty plea due to ineffective assistance of counsel because his attorney failed to advise him of deportation consequences, recognizing that the Minnesota Supreme Court's *Campos*

¹ The U.S. Supreme Court also recently held that its *Padilla* decision does not apply retroactively. *Chaidez v. United States*, 133 S. Ct. 1103 (2013).

decision and the U.S. Supreme Court's *Chaidez* decision foreclosed such claims for convictions entered before *Padilla* was decided in 2010. Moreover, the parties do not dispute that, before *Padilla*, counsel's failure to inform a defendant of the immigration consequences of a guilty plea did not constitute ineffective assistance of counsel. *See Alanis v. State*, 583 N.W.2d 573, 579 (Minn. 1998).

Rather, Ramos contends that the district court should have affirmed the vacation of his conviction because he was not given the required rule 15 advisory as to deportation consequences at the time of his plea.² Rule 15 requires that, before accepting a guilty plea, "[t]he judge must . . . ensure defense counsel has told the defendant and the defendant understands: . . . [i]f the defendant is not a citizen of the United States, a guilty plea may result in deportation, exclusion from admission to the United States, or denial of naturalization as a United States citizen." Minn. R. Crim. P. 15.01, subd. 1(6)(l).

At the plea hearing, his attorney told the court that Ramos "is a U.S. citizen," which is untrue. Neither the attorneys nor the district court, however, actually asked Ramos on the record whether he was a citizen or whether he understood the immigration consequences of his plea, and Ramos did not contradict his attorney when the attorney made this statement. Ramos signed a written plea petition, one provision of which explained that his guilty plea could result in deportation.

² We consider Ramos's rule 15 argument even though the district court did not analyze or expressly rule on the issue. Ramos clearly presented the argument to the district court both in his initial postconviction petition and in opposition to the state's motion to reconsider. *See Dukes v. State*, 718 N.W.2d 920, 921-22 (Minn. 2006) (stating that when reviewing a postconviction court's decision, the reviewing court is "not limited to the reasoning of the postconviction court, and we can affirm the denial of postconviction relief on grounds other than those on which the postconviction court relied").

Without reaching the merits of his rule 15 argument, we conclude that Ramos is not entitled to postconviction relief because he failed to raise the issue in a timely manner. In general, a petition for postconviction relief may not be filed more than two years from the date of conviction or sentence if no direct appeal is filed. Minn. Stat. § 590.01, subd. 4(a)(1). One basis on which the district court may hear a petition for postconviction relief outside of this two-year time bar is if “the petitioner establishes to the satisfaction of the court that the petition is not frivolous and is in the interests of justice.” *Id.*, subd. 4(b)(5). A petition invoking this interests-of-justice exception, however, “must be filed within two years of the date the claim arises.” *Id.*, subd. 4(c). This date is determined using an objective standard; a claim “arises when the petitioner knew or should have known that he had a claim.” *Sanchez v. State*, 816 N.W.2d 550, 560 (Minn. 2012).

Ramos can thus only maintain his claim for relief for failure to advise under rule 15 if he brought his postconviction petition within two years of when he knew or should have known that he was not advised of all of his rule 15 rights—the date of the guilty plea. *See id.* Ramos pled guilty on October 23, 2007, and he filed his postconviction petition on March 30, 2012, clearly outside of the two-year time bar that applies to the interests-of-justice exception under Minn. Stat. § 590.01, subd. 4(c). Therefore, we affirm the district court’s dismissal of his petition.

Affirmed.